
YONG WEE MING**v.****CHIN THIAN GUAN**

HIGH COURT MALAYA, SEREMBAN

MOHD. AZMI FJ

[ORIGINATING MOTION NO. 5 OF 1982]

15 JANUARY 1983

LAND LAW: *Private caveat - Application for removal - Section 327(1), National Land Code - Whether caveator had registrable interest - Whether applicant aggrieved person - Competing interests of caveator and unregistered proprietor - Whether applicant bona fide.*

The application under s. 327(1), National Land Code was for the removal of a private caveat lodged by the respondent. The applicant was the purchaser under a sale and purchase agreement with the registered proprietor.

Held:

[1] The caveator had established a *prima facie* case that he had a caveatable interest in the lands in dispute. The onus is on the caveator to prove that he has such an interest. [*Nanyang Development 1966 Sdn. Bhd. v. How Swee Poh* [1970] 1 MLJ 145 FC].

[2] The applicant was an aggrieved person as he was prevented from obtaining a transfer of the pieces of land into his name pursuant to the sale and purchase agreement, but he was not a registered proprietor with an indefeasible title under s. 340, National Land Code. What had to be decided was the competing interests between an unregistered proprietor and a caveator.

[3] The absence of a trust caveat in favour of the caveator was only relevant in determining whether the applicant was a *bona fide* purchaser for value without notice.

[4] The applicant was not a purchaser without notice. Knowledge of his agent must be imputed to him.

[5] The caveat must remain. Serious issues had been raised by the caveator's claim and must be tried.

[*Application dismissed.*]

Case referred to:

Nanyang Development Sdn Bhd. v. How Swee Poh [1970] 1 MLJ 145

Legislation referred to:

National Land Code 1965, ss. 327(1), 332, 333, 340

For the applicant - C. Paramjothy; M/s. Wong & Paramjothy

For the respondent - Humfrey Ball

JUDGMENT**Mohd. Azmi FJ:**

This is an application for removal of a private caveat lodged by the respondent in respect of 8 shop lots in the township of Tampin of which the applicant is the purchaser under a Sale and Purchase Agreement with one Tan Tock Sing, the registered proprietor. The application is made under s. 327(1) of the National Land Code which provides that any person or body

- a** aggrieved by the existence of a private caveat may at any time apply to the Court for an order for its removal, and the Court may make such order on the application as it may think just.

- b** The facts of this case may be summarised as follows. By a Sale and Purchase Agreement dated 23 December 1981, the applicant agreed to buy from Tan Tock Sing, the registered proprietor, all the 8 shop lots in Tampin town at the total price of RM320,000. Since the lands were then charged to Tong Bee Finance (M) Berhad to secure repayment of RM250,000 loan granted to the vendor (Tan Tock Sing) it is provided under Clause 2, 3 and 4 of the agreement that only RM70,000 of the purchase price was to be paid to the vendor, and the balance of RM250,000 was to be paid by the applicant/purchaser direct to Tong Bee Finance for the purpose of discharging the charge and thus enabling the applicant to transfer the lands to himself. Consequently, the vendor by Clause 5 undertook to the applicant/purchaser
- c** that he would execute transfer documents in escrow and deposit the same to the applicant's Solicitors Messrs Wong and Paramjothy of Johore Bahru who should hold the same pending completion of payment of the balance of the purchase price. It now transpires from the two affidavits in support of the present application that it was in fact the intention of the applicant/purchaser to raise the balance sum of RM250,000 by taking a loan of the said sum from Messrs Hock Hua Bank of Johore Bahru by charging the lands to be purchased as security. This financial arrangement which the parties have deemed unnecessary to be included in the Sale and Purchase Agreement, is, of course, a problem which concerns only the applicant/purchaser. It does not also come as a surprise that such a financial arrangement by the applicant to raise money for the purchase of the said lands would entail considerable difficulties and delays.

- e** Now touching on the law, in an application of this nature the onus of proof is on the caveator to satisfy the Court that he has good grounds for his alleged claim that he has a registrable interest in the land, and that it is just for the caveat to remain [see *Nanyang Development Sdn. Bhd. v. How Swee Poh* [1970] 1 MLJ 145] On the facts it is pertinent to observe that whereas in *Nanyang Development* case (ante) the application to remove the caveat was made by the registered proprietor, here it is made by a purchaser under an agreement with the
- f** registered proprietor for the sale of the lands in question. I am not saying for one moment that the applicant is not an aggrieved person under s. 327(1), but unlike a registered proprietor of land, he has no indefeasible title as conferred by s. 340 of the National Land Code. In this case, the applicant is aggrieved by the existence of the private caveat simply because he is prevented thereby from transferring the 8 pieces of land into his name pursuant to the 1981 Sale and Purchase Agreement. The caveat was registered on 8 April, 1982 but it was
- g** not until 22 April that the applicant/purchaser paid the balance of the purchase price pursuant to Clause 2 of the Agreement. Final payment of RM250,000 was therefore made after the caveat had been lodged, and it was 4 days later on 26 April as a result of a search made at Land Office Tampin prior to the presentation of the documents of title that the respondent's private caveat was discovered (see paras. 12, 13 and 15 of Mr. Paramjothy's affidavit dated 27 May 1982). Although the first search at the Land Office was made on 3 March 1982 which
- h** disclosed that the lands were free from any encumbrances except for the charge in favour of Tong Bee Finance, no other search was made till after the balance of the purchase price was paid. On the facts of the present case, what I have to decide is not the competing interest between a registered proprietor and a caveator, but between the interest of an unregistered proprietor and a caveator. The registered proprietor Tan Tock Sing is at the moment not in the picture. On the contrary, it is the intention of the caveator to sue him because the ground
- i** for lodging the caveat is that the caveator is the actual owner of the said lands which are

held in trust for him by Tan Tock Sing. On affidavit evidence it is my finding that the caveator has established a *prima facie* case that the lands in dispute which were then comprised in Mukim Grant 7 Lot 458 Tampin Town were in his registered name. On the suggestion of Tan Tock Sing, he transferred the land to him on 26 August 1971 for the purpose of developing the property into 8 shophouses of which he should receive 2 as his share. Although the instrument of transfer (Exhibit AB44) shows a nominal consideration of RM30,000, the caveator never received the money as the property was transferred to Tan Tock Sing as his trustee. Although no trust caveat was entered under ss. 332 and 333 of the National Land Code, the caveator's averment in para. 3 of his affidavit sworn on 17 November 1982 to the effect that he remained in his house on the disputed lands until 1979 when clearing of site took place, has never been challenged. In any event the absence of a trust caveat is only relevant in determining whether the applicant is a *bona fide* purchaser for value without notice. In my view the type of joint venture arrangement entered into between the caveator and Tan Tock Sing is not uncommon. The letter from Tan Tock Sing dated 3 March 1979 and marked as Exhibit "CTGI" clearly supports the caveator's story that the 8 shophouses were being built on the caveator's land. In the absence of evidence to the contrary, I cannot accept that the property referred to in the said letter has no reference to the lands in dispute. The reference to the building of 8 shophouses by Tan Tock Sing is consistent with the 8 shop lots comprised in the Sale and Purchase Agreement between the applicant and Tan Tock Sing.

It is the contention of the applicant that he is a *bona fide* purchaser for value without notice. On affidavit evidence I am doubtful that he had no notice. Thus, in paragraph 5 of the caveator's affidavit he has this to say:

Sometime in November 1981 I went to the offices of Syarikat Seri Belian Sdn. Bhd., to inquire about the developments. I saw Mr. Tan Tock Sing and Mr. Henry Lim alias Lim Meng See. Mr. Lim Meng See knew that the said land belonged to me and that the other 6 lots had been sold to various purchasers. Sometime at the end of March or early April, 1982 Tan Tock Sing had disappeared and I heard rumours that the said land had been sold and so I lodged caveats against the eight lots.

Now, looking at the letter dated 5 March 1982 addressed to the applicant by his solicitors and copied to Mr. Lim Meng See @ Mr. Henry Lim (Exhibit "Y3"), it is reasonable to infer that Mr. Henry Lim in requesting the solicitors to check the title deeds of the lands in dispute, was acting as agent for the applicant/purchaser. Since Mr. Henry Lim @ Mr. Lim Meng See knew of the arrangement regarding the shop building project between the caveator and Tan Tock Sing, I am of the view that knowledge must be imputed to the applicant that the caveator has a registrable interest in the lands.

Having regard to all the evidence, exhibits and submissions of Counsel, I find the caveator's claim to the property has raised serious issues to be tried. I am satisfied that he has good grounds for his alleged claim that he has a registrable interest in the lands, and that in the circumstances of the present case it is just for the caveat to remain. Accordingly I dismiss the application to remove the caveat. I also make an order that the caveator/respondent should file his claim against Tan Tock Sing within one month and in default the applicant is at liberty to reapply. The caveat is extended until further order.

Also found at [1983] 1 CLJ 262

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